CIRCUIT COURT OF HANOVER COUNTY.

COMMONWEALTH *v.* ONE PACKARD CAR.

1. Forfeiture—Property Used in Violation of Law—Nature of Proceedings—Innocence of Owner.—State legislatures and Congress have the inherent right to enact statutes forfeiting property used in the violation of law, even though it is so used by some one other than the owner and the owner is absolutely ignorant of the use to which his property is put. The proceeding under statutes of forfeiture are proceedings in rem, against the property, and the guilt or innocence of owner has nothing to do with the liability of the property to forfeiture.

2. Forfeiture—Property Used in Violation of Law—Exception to Rule.—The only exception to the rule against forfeiture of all interests, whether of innocent owner, licensor or other person, under a statute of absolute forfeiture, is where the property used in violation of the law is stolen from the owner or is in the hands of a trespasser. This is not so much a court made exception to the rule, as it is an adjudication that the property under such circumstances can not be guilty; in other words the property, before it can be adjudged guilty, must have come lawfully into the hands of the person who puts it to the illegal use.

3. Statutes—Construction—Expressio Unius, Exclusio Alterius.—If a statute expressly excepts one class which would otherwise be within its terms, the exception negatives the idea that any other class is to be excepted.

4. Statutes — Amendment — Omission. — When the legislature amends a statute by omitting a provision, it must be presumed that the legislature acted with a full knowledge of and in reference to the existing law on the same subject, and the construction placed upon it by the courts, and intended by the omitted provision to make some change in the existing law.

5. Prohibition Law—Forfeiture of Vehicle Engaged in Illegal Transportation of Ardent Spirits.—Section 57 of the Prohibition law, Acts 1918, contemplates the forfeiture of a vehicle, automobile, etc., engaged in the illegal transportation of ardent spirits when the owner of the car takes no part in the illegal transportation and is ignorant of the fact, although such owner did lend or hire the vehicle or automobile to the party who was directly or indirectly responsible for the illegal use to which it was put.

Walter Sydnor, of Ashland, and *F. M. Chichester,* of Fredericksburg, for the Commonwealth.

H. M. Smith, Jr., and *McNiel & Bremner,* all of Richmond, for the defendant.

R. H. L. CHICHESTER, J. This case was submitted to the Judge of this Court for decision without the intervention of a jury upon the following agreed statement of facts:

"It is agreed that the car in question to-wit: Packard, Pennsylvania license tag No. 352787 described in the information, was seized in Hanover County by J. C. Chichester, Sergeant of the City of Fredericksburg, on the 30th day of November, 1918, while in the possession of C. P. Landers, and that the said car was transporting ninety gallons of ardent spirits contrary to law.

It is further agreed that Mrs. W. M. Landers bought the said automobile in Baltimore, Md., November 21, 1918, and did bring it to Richmond at that time, and did on or about the 26th day of November, send said car back to Baltimore, by C. P. Landers, her son, for the purpose of having certain repairs made to and on said automobile, and that on his return from this last trip C. P. Landers did transport ardent spirits as aforesaid.

It is further agreed that the car in question was and is now, the property of the respondent, Mrs. W. M. Landers, and that the said W. M. Landers and no other person, had any interest or equity in said Packard Automobile, and that said respondent was not at the time of said transportation, or at any other time, knowingly aiding or abetting the said C. P. Landers or any other person in the transportation of ardent spirits."

Under these circumstances the contention of the attorney for the Commonwealth is that, upon information filed against the car as provided by law, the car is forfeited to the Commonwealth under the provisions of Sec. 57 of the Prohibition law, Acts 1918.

The contention of the respondent is, that the act above referred to does not contemplate the forfeiture of a vehicle, automobile, etc., engaged in the illegal transportation of ardent spirits when the owner of the car (or a lienor) took no part in the illegal transportation and was ignorant of the fact, although such owner did lend or hire the vehicle or automobile to the party who was directly or indirectly responsible for the illegal use to which it was put.

It is clearly established by all the authorities that have come to my notice, and it is indeed conceded by counsel for the claimant of the automobile, which the attorney for the Commonwealth seeks to have forfeited in this case, that the legislatures of the various states and the Congress of the United States have the inherent right to enact statutes forfeiting property used in the violation of law, even though it is so used by some one other than the owner and the owner is absolutely ignorant of the use to which his property is put. Boggs *v.* Commonwealth, 76 Va.

993, and cases there cited; U. S. *v.* 2 Horses, Federal case, No. 16578; U. S. *v.* Distillery, Federal case No. 14963; U. S. *v.* 2 Bay Mules, 36 Fed. 84.

Proceedings under statutes of forfeiture are held to be, and are in fact proceedings in rem, against the property, and the guilt or innocence of owner or other person has nothing to do with the guilt or innocence of the property used or alleged to have been used in violation of the law.

The only exception to the rule against forfeiture of all interests, whether of innocent owner, lienor, or other person, under a statute of absolute forfeiture, is where the property used in violation of the law is stolen from the owner or is in the hands of a trespasser. And this cannot be truly said, to be a court made exception to the rule, as much as it is an adjudication that the property under such circumstances cannot be guilty. In other words the property, before it can be adjudged guilty must have come lawfully into the hands of the person or persons who put it to the illegal use. Boggs *v.* Commonwealth, supra; Distilling Co. *v.* U. S., 96 U. S. 395; U. S. *v.* 1 Black Horse, 129 Fed. 167; Leek *v.* Anderson, 57 Cal. 251, 41 Am. Rep. 116; Skinner *v.* Thomas, 87 S. E. 978.

The gist of the foregoing decisions is very well epitemized in 22 Cyc. at page 1643:

"All personal property employed in the business of illicit distilling, is subject to forfeiture, irrespective of ownership."

and at page 1681 in 22 Cyc., where it is said:

"In addition to the penalties imposed upon persons who remove or conceal goods upon which the tax has not been paid with intent to defraud, all conveyances and animals used in the accomplishment of this unlawful purpose are forfeitable. Knowledge or intent on the part of the owner of a conveyance to use it illegally is not required to be shown. The conveyance and animals are considered the offenders, and are liable without regard to the misconduct or responsibility of the owner. Innocent owners of property forfeited must obtain redress from those who were intrusted with the property and use it unlawfully or by application to the officers of the government who have been invested with authority to remit forfeitures," citing many authorities in the notes.

There being then no question as to the right of the Legislature of Virginia to enact a forfeiture statute which forfeits to the Commonwealth the rights of an innocent owner (or lienor) in any vehicle used in the illegal transportation of ardent spirits, the question to determine is, has the legislature enacted such a statute. This depends, of course, upon the construction of the act under which it is sought to forfeit the automobile in the in-

stant case. The contention of the defendant is that the legislature did not intend, by this act, to forfeit the rights of an innocent owner of a vehicle used illegally in the transportation of ardent spirits.

Let us now examine that statute in the light of the principles set out in the foregoing cases, construing statutes of a similar nature and purpose; in the light of other well known rules of construction hereinafter referred to, and in the light of the rule of construction laid down by the legislature in the act itself for the guidance of the courts in construing it.

The legislature has declared, (acts General Assembly 1918 page 614, Sec. 58) "This entire act shall be deemed an exercise of the police power of the state for the protection of the State, for the protection of the public health, peace and morals, and the prevention of the sale of ardent spirits, and all of its provisions shall be liberally construed to effect these objects." In this connection see Kloss' Case, 103 Va. p. 868.

This rule of construction effectually disposes of the argument so much relied on by counsel for the defendant, that the statute being criminal in its nature, should be strictly construed against the Commonwealth.

The statute under which the condemnation and forfeiture in this case is sought to be had is embodied in Sec. 57 of the Acts of the General Assembly, 1918 at page 612. So far as it is necessary to set out the statute herein, it is as follows:

"When any officer charged with the enforcement of this law shall have reason to believe that ardent spirits are being transported in any wagon, boat, buggy, automobile or other vehicle, whether of like kind or not, contrary to law, he shall have the right and it shall be his duty to obtain a warrant to search such wagon, boat, buggy, automobile or other vehicle, and to seize any and all ardent spirits found therein which are being transported contrary to law. Whenever any ardent spirits which are being illegally transported or are being transported for an illegal use, shall be seized by an officer of the State of Virginia, he shall also take possession of the vehicle and team, or automobile, boat or any other conveyance, other than a conveyance owned and used by a railroad, steamboat or express company, in which such liquor shall be found, and turn the same over to the sheriff of the county, or sergeant of the city in which such seizure shall be made, and such vehicle and team, automobile, boat or other conveyance shall be forfeited to the Commonwealth; and shall report the seizure to the attorney for the Commonwealth of the county or city in which such seizure shall be made, and to the commissioner in writing, and the attorney for the Commonwealth shall file an information in the name of the

Commonwealth against such vehicle and team, automobile, boat or other conveyance by name or general designation. The information shall allege the seizure, and set forth in general terms the cause and grounds of forfeiture. It shall also pray that the property be condemned and sold and the proceeds be disposed of according to law, and that all persons concerned in interest be cited to appear and show cause why the said property should not be condemned and sold to enforce the forfeiture, which information shall be sworn to by the attorney for the Commonwealth. Upon the filing of the information the clerk of the court shall forthwith issue a notice reciting briefly the filing of the information, the object thereof, the seizure of the property and citing all persons concerned in interest to appear on a specified day of the next term of the court, after the publication of said notice, and show cause why the prayer of the information for condemnation and sale should not be granted * * *

Provided that any person claiming an interest therein may give a forthcoming bond, in amount, double the value of the property so seized, conditioned that the vehicle and team, automobile, boat or other conveyance will be forthcoming in compliance with any order of the court having jurisdiction and to pay all costs and fees incident to such seizure.

Any person interested may appear and be made a party defendant and make defense to the information, which must be done by answer under oath, and the proceedings shall conform as nearly as practicable to chapter 98 of the Code of Virginia of 1904.

But, provided, further, that any equity or interest of any person who is in charge of such vehicle and team, automobile, boat, or other conveyance, or who is an occupant of the same at the time such seizure is made, shall be forfeited by making such person or persons a party defendant, and the possession of such ardent spirits in such vehicle, automobile, boat or other conveyance, shall be prima facie evidence that the person in charge knew such ardent spirits were in such vehicle, automobile, boat or other conveyance, nor shall it be a ground of defense that such person or persons by whom said property was used in violation of law has not been convicted of such violation. The said information shall be independent of any proceeding against such person or any other for violation of law."

It will be noted that in addition to the fact as above stated that the courts construe statutes or forfeiture as proceeding in rem, the act under consideration in the last sentence above quoted expressly makes the proceeding thereunder a proceeding in rem, and independent of the prosecution against the driver or occupants of the vehicle or any other persons.

The first paragraph of this section (57) after providing for the seizure of any vehicle in which ardent spirits is being transported illegally, declares emphatically that such vehicle shall be forfeited to the Commonwealth. The only conveyances excepted are conveyances owned by railroad, steamboat or express company. There is not a line or a syllable in this paragraph from which can be drawn any sort of an implication that the legislature intended to except any other vehicles. The legislature on the contrary, laid down the general rule forfeiting to the Commonwealth *all* vehicles caught illegally transporting ardent spirits and it expressly named all the exceptions to the general rule.

It is submitted that the legislature, certainly up to this point, could not have used plainer or more explicit language. The rule "Expressio unius, exclusio alterius," applies with full force here. In Bank *v.* McCombs, 105 Va. 473, the court said:

"If a statute expressly excepts one class which would otherwise be within the terms, the exception negatives the idea that any other class is to be excepted."

And again in U. S. *v.* 1 Black Horse, 129 Fed. 170, the court said:

"The rule 'Expressio unius, exclusio alterius,' is very important in the construction of statutes of this nature."

The Court further said at page 170:

"Section 3063 provides that, in case of vehicles used by common carriers in the transaction of their business, such vehicles shall not be subject to forfeiture, unless it shall appear that such agent of the common carrier in charge of the vehicle at the time of such unlawful importation or transportation was a consenting party to the illegal importation or transportation. This section is very important in arriving at the intention of Congress in reference to the whole law before us. It provides distinctly that common carriers should be charged with knowledge before their property can be forfeited. The legislature has clearly shown that it did not have such intention with reference to the vehicles of others besides common carriers. The rule 'Expressio unius, exclusio alterius,' is very important in the construction of statutes of this nature. The Congress has shown clearly in these statutes before us that it regards property as offending when used not only in the importation, but in the transportation, of smuggled goods. The case at bar is like the case of United State *v.* Two Bay Mules, (D. C.) 36 Fed. 84, although the statute in this case makes the contention of the government much more reasonable than in the Case of the Two Bay Mules."

It cannot be claimed by any flight of imagination that that

portion of this paragraph requiring that all persons concerned in interest be cited to appear and show cause why the property should not be condemned and sold to enforce the forfeiture, creates any other exception or gives any other defense than those named expressly in the same paragraph. Without some such provision as this, the statute, according to the decision in the case of Boggs *v.* Commonwealth, supra, would be unconstitutional, as not providing a day in court to defend the information. Of course parties in interest must be cited to appear. They have a right to defend in any way permitted by the statute. They may show that the vehicle is *not guilty,* that is, that it was not illegally transporting ardent spirits, or that it was taken from an innocent owner without his permission, by a trespasser or stolen, or that the conveyance is owned or used by a railroad, steamboat or express company. But there is no intimation that the legislature, either in this part of the statute or elsewhere, as will be shown later, intended to make ignorance or innocence on the part of an owner who was not present at the seizure, a defense to the forfeiture. If there had been it is submitted that the legislature, when it mentioned the exceptions or defenses heretofore set out, would have included this defense among them. As will be hereinafter more fully shown, this view is greatly strengthened by the fact that the prohibition act of 1916, Sec. 57, paragraph 2, at page 243, which was repealed by the Act now under consideration, expressly made ignorance of the use to which a vehicle was put, by some one other than the owner, a defense available to the absent owner to the partial forfeiture provided for by the 1916 act. But it did more than that, it declared the owner must *clearly* show his ignorance, thus putting the burden of proof as to his ignorance of the use to which his vehicle was put upon the owner. This defense is omitted from the act of 1918, and thus also under the well established rule of law, ignorance is eliminated as a defense under the present statute or at common law.

The legislature knew the effect of such language of forfeiture as it used in the 1918 act, and the construction the Courts had put upon such language, and if it had intended to limit it in any other way than it did, it would have done so in language as clear as it declared the forfeiture, especially as heretofore shown it provided against a strict construction of the law which by some peradventure might have, by implication, given the absent owner a defense not clearly set out in the statute.

In City of Richmond *v.* Southerland, 114 Va. page 688, the court said:

"When the legislature amends a statute by adding to it a new provision, it must be presumed that the legislature acted with a

full knowledge of and in reference to the existing law on the same subject, and the construction placed upon it by the courts, and intended by the added provision to make some change in the existing law."

Paragraph two of Sec. 57 of the Act, provides that any person claiming an interest in the vehicle may give a bond in the penalty of double the value of the vehicle, conditioned to have it forthcoming in compliance with any order of the Court. It gives the owner possession and the use of his vehicle during the pendency of the proceedings, but provides for no defense against forfeiture, and no such construction can by implication be drawn from anything in this paragraph.

Paragraph 3 provides that any person interested who was cited to appear as required by the 1st paragraph of the section, or who voluntarily appears because he has an interest, may be made or have himself made a party defendant to the information and make defense, filing his answer under oath. But there are no defenses given to such persons expressly or by implication, except the general issue, that is, that the vehicle is not guilty; that is, that it did not illegally transport or did not transport for illegal purposes, ardent spirits; or that it is not guilty because it was not lawfully in the hands of the driver; or that the vehicle is owned or used by a railroad, steamboat or express company.

We now come to paragraph 4 of the 57th Section of the Prohibition Act, from which counsel draw the inference that the legislature intended to accord to or preserve to, an absent innocent owner of a vehicle which has been seized while illegally transporting ardent spirits, the defense that he or she is ignorant of, or innocent of the use to which such vehicle was put.

I think it will tend to clearness in the construction of this paragraph of Sec. 57 of the statute, and of Sec. 57 as a whole, if it is borne in mind;

1st. That by express provision of the statute itself it is to be liberally and not strictly construed.

2nd. That under the proceedings of forfeiture the inquiry is, is the *vehicle* guilty?

3rd. That by the express terms of the statute the guilt of the vehicle is not dependent upon the guilt or innocence of the driver of the vehicle or any other person.

4th. That there are two distinct penalties imposed by the present Prohibition Act. One is imposed upon the person illegally transporting ardent spirits, and the other is imposed upon the vehicle illegally transporting ardent spirits, and

5th. That the latter part of 1st paragraph of Sec. 57 of the act and the second, third and fourth paragraphs relate entirely

to procedure, while the first part of paragraph one declares what acts will work a forfeiture and the exceptions thereto.

The 4th paragraph of Sec. 57 is as follows:

"But, provided, further, that any equity or interest of any person who is in charge of such vehicle and team, automobile, boat or other conveyance, or who is an occupant of the same at the time such seizure is made, shall be forfeited by making such person or persons a party defendant, and the possession of such ardent spirits in such vehicle, automobile, boat or other conveyance, shall be prima facie evidence that the person in charge knew such ardent spirits were in such vehicle, automobile, boat or other conveyance, nor shall it be a ground of defense that such person or persons by whom said property was used in violation of law has not been convicted of such violation. The said information shall be independent of any proceeding against such person or any other for violation of law."

As above indicated the absent innocent owner, who was expressly given the defense of ignorance upon his assuming the burden of showing his ignorance, by the 1916 Act, is strangely ignored in every part and paragraph of the 1918 Act, and if the innocent owner who is *present* at the time of the seizure is given this defense by the 1918 act (which I think will later be clearly demonstrated is not the case), that does not argue that the *absent* innocent owner is by implication allowed the same defense, especially in view of the history of legislation upon the subject.

"A clearly expressed intent by plain words in one part of a statute cannot be defeated by mere implication from a doubtful clause in another part. If a subsequent clause is obscure it will not control a previous clause. A clearly expressed intention in one part of the statute does not yield to a doubtful construction in another portion of it." Kelly *v.* Bowman, 68 W. Va. 49, 69 S. E. 456; Wellsbury R. Co. *v.* Panhandle, 56 W. Va. 18, 48 S. E. 746.

"And where the general intention of the legislature is clear and the spirit and purpose of the statute are manifest, a mere implication or inference of a contrary particular or special intent, arising out of language of doubtful meaning, must yield to the general intent." Wellsbury R. Co., supra.

"The obvious intention of the legislature must be given effect rather than defeated by the misapplication of a rule, the conceded function of which is to elucidate what is oscure and not to obscure that which is manifest." Commonwealth *v.* Worth, 116 Va. 604.

But it is not necessary in this case to invoke the principle referred to in the above cases, because a fair or even strict construction of the statute does not give the innocent owner or oc-

cupant who is present at the seizure, any such advantage over the innocent absent owner. Let us see if it does. It must be remembered that there are two penalties suffered for the transportation of ardent spirits in an automobile or other vehicle.

1st. The party transporting the ardent spirits, upon proof of guilt, suffers the penalty of personal punishment, to-wit: fine and imprisonment, as prescribed by law. Paragraph 7, Sec. 67 of acts 1918 at page 614 of said act.

2nd. The automobile or other vehicle in which the ardent spirits are being transported, is forfeited to the Commonwealth. Paragraph 1 of said act.

It is manifest that a person in charge of such a vehicle or an occupant of such a vehicle, could not be punished for the crime of transporting ardent spirits, unless he knew he was transporting ardent spirits. While ignorance of the existence of a law making it a crime to transport ardent spirits would not excuse such a person, ignorance of the fact that he was actually transporting ardent spirits would excuse him, and ordinarily the burden of proving the whole case, beyond a reasonable doubt, including knowledge of the fact, would be upon the Commonwealth. The legislature knew this, and it knew that all the drivers and occupants in charge of automobiles pleaded this kind of ignorance and innocence, and so the legislature, in the 1918 Act, paragraph 4, made the possession of ardent spirits prima facie evidence that such persons knew such ardent spirits were in such automobile, etc., so as to shift the burden of proof as to knowledge from the shoulders of the Commonwealth to the shoulders of him who was pleading by way of confession and avoidance, not for the purpose of ascertaining whether the automobile or other vehicle was guilty in another and entirely different proceeding in rem against the automobile, but in ascertaining whether the person in charge or occupant was personally guilty, and should suffer personal punishment.

This 4th paragraph provides, in order to comply with the decision in Boggs *v.* Commonwealth, supra, that in order to forfeit the equity of right of the person in charge or occupant, he or they shall be made a party or parties defendant to the forfeiture proceedings, and he can make defense there that the car is not guilty, but his knowledge of what was in the car has nothing to do with this proceeding against the car, and this paragraph expressly says so; for it concludes,

"nor shall it be grounds of defense, (in the forfeiture proceedings of course), that such person or persons by whom said property was used in violation of law, has not been convicted of such violation."

The forfeiture proceedings shall be independent of any pro-

ceedings against such persons, etc., or any others, for violation of the law. It seems apparent therefore, that his knowledge of the contents of the car on the part of the person in charge of or occupant of such automobile, only has reference to his personal guilt, and is a defense in that case only when he can successfully rebut the presumption, that is raise a reasonable doubt as to whether he was ignorant, but by the very terms of the statute his guilt or innocence has no bearing upon the question as to whether the car is guilty. Its guilt or innocence are dependent upon the facts proven in the case against it, to-wit: was it illegally transporting ardent spirits.

This is the only construction which makes harmonious each and every paragraph of the act under consideration. It gives the owner of the vehicle, present at the time of the arrest, no advantage over the absent owner, but on the contrary makes it necessary for him to rebut the prima facie case made out against him. This is the only reasonable logical construction which can be drawn from the language used, but if it be necessary to add anything to what has been said, and if there still may perchance remain any doubting Thomases, let us look at the history of prohibition legislation in Virginia as indicated the policy of the State with reference thereto, and let us also look at the wrongs to be overcome and the evils to be corrected, especially those which grew out of evasions of the law prior to the 1918 act, all of which were well known to the Legislature when it came to enact the present prohibition law.

"In seeking the meaning and intent of a statute, regard must be had to its subject matter and all the surrounding circumstances known to the legislature." State *v.* Harden, 62 W. Va. 313, 58 S. E. 715, 6 S. E. 394.

"A statute is to be interpreted in the light of the nature of its subject matter, the purpose of the legislature in passing it, and the conditions and circumstances under which the law-making body must have known it would operate." State *v.* Balt. R. R. Co., 61 W. Va. 367, 56 S. E. 518.

"Where the language of the statute is ambiguous or the meaning doubtful, the surrounding circumstances, the history of the times, and the defect or mischief which the statute was intended to remedy, may be resorted to in seeking its true meaning and purpose." Wellsburg, etc., supra; City of Richmond *v.* Southerland, 114 Va. 688.

"An undeviating course of legislation in a certain direction in an effort to systematize and perfect the law, strongly emphasizes the express language embodying the final declaration of legislative will." Wellsbury, etc., supra.

It is not necessary to go back to the time of the first feeble

step which brought local option to small areas and review legislation down to the present time. Such a review is interesting and throws a flood of light on the Act now under discussion, but it would unnecessarily prolong this opinion. Suffice it to say that shortly prior to the enactment of the prohibition act of 1916, the sovereign people of Virginia had, upon a referendum for the purpose, solemnly declared by a majority of 30,000 votes, that the saloon should not be licensed in Virginia and the legislature of 1916 undertook to carry out that mandate of the people by appropriate legislation. The legislature of 1916 rightly construed that the mandate of the people was that Virginia should be made and kept, as far as legislation could do it, practically "bone dry."

It is not necessary to go back further than the 1916 Prohibition Act, as indicated, because in this act the legislature undertook to crystallize into law the policy of the commonwealth upon the question of ardent spirits. Human foresight could not have anticipated all the dark and devious ways by which this law would be partially, at least, nullified, by bootleggers and others, bent upon opposition to this policy of the state, and so the legislature found it necessary to repeal the 1916 act at its very next session and substitute for it the Act of 1918 now under discussion. Now let us;

1st. Look into the manner in which the 1916 Act was evaded, that is to show the evil which was to be corrected, and

2nd. Compare the two acts so far as they relate to the instant case, and see if the design was not without a doubt to correct those evils.

The Act of 1916, at page 243, provided that the officer should seize any vehicle illegally transporting ardent spirits and *arrest* the person in charge, but that such person may give bond for his appearance in court to answer the charge, and to pay the fine and costs if convicted, in which case the automobile or other vehicle should be released. Such was the provision for personal punishment of the person in charge of the car. But the statute went on and made provision for the *owner* who was not present at the seizure as follows:

"The court wherein the conviction is made shall, unless good cause to the contrary is shown by the owner, who must clearly prove that he was ignorant of the purposes for which his team or vehicle or automobile was being used, order a sale by public auction of the property seized and the officers making the sale, after deducting the expenses, etc., cost and fine, turn the balance over to the owner."

Thus it will be seen that the 1916 Act provided for a partial forfeiture of the car, not to pay the costs and fine of the owner,

if he was not also the driver at the time of the seizure, but of the driver, and then only if he, the absent owner, was unable to prove that he was ignorant of the purposes for which his vehicle was being used. (Note particularly that this burden of proving ignorance was on the absent owner.) No such burden rested on the driver. The case of the Commonwealth had to be made out against him under the same rules of evidence as other criminal cases had to be made out. Ignorance of the fact as to what made up his load protected the driver, and ignorance on the part of the absent owner as to what the car was being used for, protected him.

What was the result, as the legislature soon found? These men, owners and drivers, soon found out that where "ignorance was bliss twas folly to be wise," and so they one and all became blissfully ignorant. There never was a driver arrested who knew what he was hauling. Some mysterious unknown man had hired him to go to Baltimore and leave his car at the curbing on a certain street and at a certain number, and while he was dining or resting, it was loaded up with suit cases or other packages, the contents of which were unknown to the driver. Juries frequently swallowed this story or one equally as fanciful, and acquitted the prisoner in which case driver and automobile went free. Or if the accused was convicted, the absent owner came forward to claim the car. He was always the innocent dupe of the driver of the car to whom he had kindly loaned or hired, it. He brought proof to this effect and there was no proof to the contrary, but his kindness and generosity were so all pervading, that in spite of the wretched treatment he had received at the hands of the driver of his car, he always went on his bond, if he reached him before the trial, and finally paid his fine. Everybody, including the legislature, knew the owner was the real violator of the law, and they knew another thing, they knew that these violators of the law, whom the proof could never reach, were employing thugs and criminals and gunmen of the most desperate sort, to assist them in defying the Sovereign will of the Virginia people, who dashed along the public highways of this State in high-powered automobiles, at terrific rates of speed, armed to the teeth with firearms of large calibre which they used at sight upon the officers of the Commonwealth commissioned to enforce its laws. The legislature knew this and therefore it amended the 1916 Act so as to inflict some heavier penalty upon these criminals behind the scenes, these real perpetrators of the crime whom it knew to be beyond the proof which the law required to establish guilt.

Furthermore the legislature was appraised of these evasions of the law and saw the weaknesses which permitted them. And

therefore in the 1918 Act, 1st: It declared an out and out forfeiture of all the automobiles or other vehicles seized while illegally transporting ardent spirits. It did this to inflict some penalty upon the criminals behind the scenes, the real perpetrators of the crime whom it knew to be beyond the proof which the law required to establish guilt, and to put stop to indiscriminate *lending* and *hiring* of automobiles to bootleggers. And 2nd. (Sec. 57 paragraph 4 Acts 1918): It put the burden on the driver of rebutting the presumption that he was not ignorant of what his car contained, and thus, in both instances put an end to the plea of ignorance which these two classes of malefactors had found, under the 1916 Act, to be such a very present help in time of need.

If the act of 1918, so far as it related to forfeiture means no more than counsel for defendant say it means, then the legislature did a vain and foolish thing by changing the language of the existing law without making any practical change in its effect. Indeed it did worse than that; it lifted a burden which it had seen fit to place upon the absent owner by the 1916 act, that of *proving clearly* his ignorance of the use to which the car was put, from off the shoulders of such owner and placed it upon the Commonwealth, not by any language appearing in the 1918 act, but by some legerdemain of logic which this court has been unable to comprehend. A backward step in prohibition legislation which has not been heretofore noticed by the most ardent observer since the early days of local option.

No, I think these changes in the law were made for a purpose. They were the result of a knowledge of the evils to be remedied, and I think they have remedied them.

"The limits of the application of a statute are generally held to be co-extensive with the evil or purpose it was intended to suppress or effectuate, they neither stop short of nor go beyond the purpose the legislature had in view." Charleston, etc. *v.* Charleston, etc., 61 W. Va. 34, 37, 56 S. E. 198.

The case of Skinner *v.* Thomas, N. C., 87 S. E. 979, is not in conflict with the conclusions heretofore reached. Nor have I found any decided case that is. The statute in that case forfeited only the right and title of the *defendant.* Our statute forfeits the car.

Nor for reasons apparent from what has been heretofore said, and especially from the fact that the statute by its own provision must be liberally construed, can the dictum of Judge Woods in United States *v.* One Saxon Automobile, referred to and relied on by counsel for defendant, to-wit:

"Nevertheless if the inference of intention to exempt from forfeiture the property of an innocent owner can be drawn by

any reasonable and fair construction of *language* of the Statute, that construction will be adopted,"
afford defendant any sort of consolation under a proper interpretation of our statute, as no such inference can by any fair construction be drawn from any language to be found in the statute.

Indeed it is manifest that the legislature had the case of Boggs *v.* Commonwealth, supra, before it when it enacted the 1918 Prohibition Statute; it provided for absolute forfeiture of all offending vehicles except those expressly excepted; it cured all defects and met all objections pointed out by the court to the statute which the court was considering, and it presented a statute, which, in some scattering cases, may work a hardship, but which nevertheless comes squarely within the influence of the decision of Boggs *v.* Commonwealth, and all other cases on forfeitures of property used in violation of law; and it enacted a statute which admits of but one construction. This court would fail in its duty if it did not, as far as it is in its power, carry out that intent.

The judgment of the court therefore is, that the Packard Automobile be condemned and forfeited to the Commonwealth.

Note.

In United States *v.* One Saxon Automobile (C. C. A), 4 V. L. R. 952, referred to in the principal case, it was held that where an automobile used in transporting untaxed spirituous liquors was forfeited under R. S., § 3450, the rights of an innocent holder of a lien on the car were lost.